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SUBJECT: ROMANIA: 2004-2005 INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT (INCSR), SECTION II, FINANCIAL CRIMES AND MONEY LAUNDERING

REF: STATE 254401

This report provides Embassy Bucharest's input for the International Narcotics Control Strategy Report, Part II, Financial Crimes and Money Laundering.

I. Summary

Romania's geographic location makes it a natural transit country for trafficking in narcotics, arms, stolen vehicles, and persons and, therefore, vulnerable to financial crimes. Romania's National Bank estimates the dollar amount of financial crimes to be between \$1 - 1.5 billion per year. Tax evasion/VAT fraud constitutes about 45% (\$500 - \$600 million per year) of this total. Fraud in the financial-banking sector, fraudulent bankruptcy and smuggling are other principal financial crimes. Romania also has one of the highest occurrences of online credit card fraud in the world. As in several other countries in Eastern Europe, corruption and the presence of organized crime activity facilitate financial crimes. Legislation and regulation designed to combat financial crime are of recent enactment and are fairly comprehensive. Nevertheless, implementation lags, while reporting and investigations are not as timely or as effective as desired.

II. Status of the Country

Money laundering results primarily from domestic criminal activity carried out by international crime syndicates, which often launder money through limited liability companies set up for this purpose. The U.S. dollar is the preferred currency. Endemic corruption in Romania and its neighboring countries abets money laundering. The proceeds from the smuggling of cigarettes, alcohol, coffee, and other dutiable commodities are also laundered in Romania. From Romania, most of the laundered funds go to off shore financial "shelters" in locations such as the Virgin Islands, Cayman Islands and Cyprus.

III. Actions Against Money Laundering

Romania criminalized money laundering with the adoption of Law No. 21/99 "On the Prevention and Punishment of Money Laundering" in January 1999. The law requires customer identification, record keeping, reporting transactions of a suspicious or unusual nature and reporting of all transactions over 10,000 euros. The National Office for the Prevention and Control of Money Laundering (NOPCML), a financial intelligence unit (FIU) was established under the law, which mandated internal anti-money laundering procedures and training for all domestic financial institutions. Entities subject to money laundering controls include banks, non-bank financial institutions, attorneys, accountants, and notaries, although in practice, these controls have not been as rigorous as those imposed on banks.

The National Bank of Romania introduced Norm No. 3, "Know Your Customer," in February 2002. The "Know-Your-Customer" norm was amended in December 2003 to strengthen information disclosure for external wire transfers and correspondent banking, in keeping with new international standards. Banks must include information about the originator's name, address and account in the wire transfer and to request the same information in case of incoming wires. Banks are further required to take proper due diligence before entering into international correspondent relations and are prohibited from opening correspondent accounts with shell banks.

In December 2002, Law no. 656/2002 on the Prevention and Sanctioning of Money Laundering went into effect, changing the list of predicate offenses to the "all-crimes" approach and requiring that every cash operation and every external wire transfer involving a sum exceeding 10,000 euros be reported to the NOPCML and monitored. In addition, the new law expands the number and types of entities required to report to the NOPCML. Some of these new entities include

art dealers, travel agents, privatization agents, postal officials, money transferors, and real estate agents. Training for these entities is necessary to ensure compliance with reporting, record keeping, recognition of suspicious transactions and development of internal controls.

The new law also provides for both suspicious transaction reports (STRs) and currency transaction reports (CTR), with the CTR amounts conforming to European Union (EU) standards. The know your customer identification requirements have been honed so that identification of the client becomes necessary upon both the beginning of a relationship and upon single or multiple transactions meeting or approaching a 10,000 euro standard.

The NOPCML receives and evaluates STRs as well as CTRs. The law also provides for feedback to be given, upon request, to NOPCML from the General Prosecutor's Office, and for NOPCML to participate in inspections and controls in conjunction with supervisory authorities. In 2003, the number of STR's increased to 882 and 1,241 reports were filed during the first three quarters of 2004. Out of the 1,241 suspicious transaction reports received by the NOPCML, 1,134 were filed by reporting entities and 107 by the supervision institutions. However, efforts to prosecute these cases have been hampered by delays in reporting suspicious transactions, by a lack of resources in some regions, and by insufficient training in conducting complex historical financial investigations. The Law on the Prevention and Sanctioning of Money Laundering increased the powers of NOPCML, but it did not provide for an increase in administrative capacity.

NOPCML has begun a process of international cooperation to exchange information with other FIUs. In November 2004, the Department of Justice's Office of Overseas Prosecutorial Assistance and Training sponsored an assessment of the NOPCML by U.S. FINCEN and a future technical assistance project between the two FIUs is planned for 2005. NOPCML also has been working closely with Italy to improve its efficiency and effectiveness through an EU PHARE project.

A US Treasury OTA advisor is assisting the National Bank of Romania in strengthening anti-money laundering (AML) and anti-terrorist financing through the introduction of improved bank examination procedures. To insure that compliance is consistent across financial sectors, the advisor in cooperation with the World Bank has also assisted in strengthening AML compliance in the securities sector, including the drafting of new AML regulations for the National Securities Commission. Plans are underway to replicate the project in the insurance industry.

Romanian law has some, but limited, provisions for asset forfeiture in the Law on Combating Corruption, No. 78/2000, and the Law on Combating Tax Evasion, No. 87/1994. The Directorate of Economic and Financial Crimes of the national police also has a mandate to pursue money laundering. Despite hundreds of money laundering cases investigated since 2001, the interface with the justice system remains ineffective.

On November 24, 2004, the GOR approved a draft amendment to the Anti-money laundering law, which is expected to be passed in 2005. The new law provides for a uniform approach to combating and the prevention of money laundering and terrorist financing. The purpose of the law is to achieve the standard contained in European Union Directive 2001/97/EC. The draft law provides that money laundering and terrorist financing will be regulated under the same law to ensure consistent and effective measures against these crimes.

The draft recommends the inclusion of additional categories of individuals and institutions with reporting obligations to the NOPCML. These obligations include not only reports on specific suspicious transactions, but also generalized intelligence involving financial patterns and typologies. Among investigative innovations, the new law will provide for better seizure proceedings, the employment of undercover investigators and the surveillance of financial accounts and communications.

The GOR announced a national anti-corruption plan in early 2003 and passed a law against organized crime, codifying the provisions of the UN Convention in January 2003, as well as a new anti-corruption law in April 2003. In the thirteen months since the September 2002 founding of the Anti-Corruption Prosecutor's Office (PNA), over 2200 cases of corruption have been investigated. Unfortunately, prosecutors have focused on low to mid-level officials and examples of the most egregious financial crimes have so far escaped serious attention. A new Criminal Procedure Code was passed and became effective on July 1, 2003. The new Code contains provisions for authorizing wiretapping,

intercepting, and recording telephone calls for up to 30 days, in certain circumstances. These circumstances, as provided for within the new Code, include terrorism acts and money laundering.

IV. Actions to Combat Terrorist Financing

Romania's political leadership has consistently and unequivocally condemned acts of terrorism. After the events of September 11, 2001, Romania passed a number of legislative measures designed to sanction acts contributing to terrorism. Emergency Ordinance 141, passed in October 2001, legislates that the taking of measures, or the production or acquisition of means or instruments with an intention to commit terrorist acts, are offenses of the same level as terrorist acts. These offenses are punishable with imprisonment ranging from five to 20 years.

The Romanian Government and the National Bank of Romania (BNR) in particular have been fully cooperative in seeking to identify and freeze terrorist assets. Emergency Ordinance 159/2001 established guidelines to prevent the use of the financial and banking system for the purpose of financing terrorist acts. The BNR, which oversees all banking operations in the country, issued Norm No. 5 in support of Emergency Ordinance 159. Emergency Ordinance 153 was passed to strengthen the government's ability to carry out the obligations under UNSCR 1373/2001, including the identification, freezing and seizure of terrorist funds or assets. The BNR receives lists of individuals and terrorist organizations from the U.S. Embassy Bucharest, UN Sanctions Committee, and the EU and circulates these to banks and financial institutions. The new law on terrorism (Law no. 535/2004) provides that the assets used or provided to terrorist entities will be forfeited, together with finances resulting from terrorist activity. To date, in regard to terrorist financing, no arrests, seizures, or prosecutions have been carried out.

In April 2002, the GOR's Supreme Defense Council of the Country (CSAT) adopted a National Security Strategy, which included a General Protocol on the Organization and Functioning of the National System on Preventing and Combating of Terrorist Acts. This system, effective July 2002 and coordinated through the Intelligence Service, brings together and coordinates a multitude of agencies, including 14 ministries, the General Prosecutor Office, the National Bank, and the National Office for the Prevention and Control of Money Laundering. The GOR has also set up an interministerial committee to investigate the potential use of the Romanian financial system by terrorist organizations.

In November 2004, the Parliament adopted Law 535/2004 on preventing and combating terrorism, which abrogated some of the previous government ordinances and took over most of their provisions. The law includes a chapter on combating the financing of terrorism by prohibiting financial and banking transactions with persons included on international terrorist lists and requiring authorization for transactions conducted with entities suspected of terrorist activities in Romania.

The GOR recognizes the link between organized crime and terrorism. Bucharest is the site of the Southeast European Cooperation Initiative, a regional center that provides law enforcement training and intelligence sharing on criminal activities, including terrorism, for several Balkan governments.

Romania participates in a number of regional initiatives to combat terrorism. Romania has worked within SEEGROUP (a working body of the NATO Initiative for Southeast Europe) to coordinate anti-terrorist measures undertaken by the states of Southeastern Europe. The Romanian and Bulgarian Interior Ministers signed an intergovernmental agreement in July 2002 to cooperate in the fight against organized crime, drug smuggling and terrorism.

V. Other International Agreements

The EU's Europe Agreement with Romania provides for cooperation in the fight against drug abuse and money laundering. Romania is a member of the Council of Europe (COE) and participates in the Council of Europe's Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL). A mutual evaluation in April 1999 by that Committee uncovered a number of areas of concern, including the high evidence standard required for reporting suspicious transactions, a potential conflict with the bank secrecy legislation, and the lack of provisions for cases in which the reporting provisions are intentionally ignored. Romania has been working to address these concerns, bringing in legal experts from the EU to consult. In late 2003, Romania also underwent a Financial Sector Assessment Program (FSAP) by the World Bank as part of that organization's pilot program.

The Mutual Legal Assistance Treaty signed in 2001 between the United States and Romania entered into force in October 2001. Romania has participated in regional and global anti-crime efforts. Romania is a party to the 1988 UN Drug Convention, the Agreement on Cooperation to Prevent and Combat Transborder Crime, and the UN Convention against Transnational Organized Crime. With Law No. 263/2002, passed in 2002, Romania ratified the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime. During 2002, Romania also ratified the Council of Europe's Criminal Law Convention on Corruption, and in December signed the UN Convention Against Corruption. Romania ratified the UN International Convention for the Suppression of the Financing of Terrorism in January 2003.

VI. Country Vulnerabilities

Romania should continue addressing the concerns of the Council of Europe evaluators by making further improvements in its anti-money laundering regime, and by continuing its progress on money laundering investigations and prosecutions. The GOR needs to adopt procedures for the timely freezing, seizure and forfeiture of criminal or terrorist related assets. Finally, the GOR must initiate reporting requirements for the cross-border movement of currency and monetary instruments.

To assist the GOR, in November 2004, the Department of Justice's Office of Overseas Prosecutorial Assistance and Training sponsored an assessment of NOPCML by U.S. FINCEN and a future technical assistance project between the two financial intelligence units is planned for 2005.

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